

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Mario Bourdon, et al.

Examiner: Not yet assigned

U.S. Serial No.: 09/701,162

Group Art Unit: Not yet assigned

International Application No. PCT/US98/25791

Filed: November 22, 2000

Docket: 051503/0278735

For: INHIBITION OF TUMOR GROWTH BY MACROPHAGE INTERVENTION

Commissioner of Patents
Washington, D.C. 20231
Box PCT

RECEIVED
13 DEC 2001
Legal O&R
International Division

PETITION UNDER 37 C.F.R. §1.47(a)

Petition is hereby made for acceptance of the above-identified application under 37 C.F.R. § 1.47(a), in which one co-inventor refuses to join in the application.

Submitted herewith is an inventor's Declaration signed by the other named inventors.

Also submitted herewith is a Statement under 37 C.F.R. §1.47(a) by an officer of the owner of the invention, setting forth the efforts to have the co-inventor join in the application, and the circumstances of the inability, to date, to obtain his signature to the inventor's Declaration. Accompanying this Statement are Exhibits A-C evidencing the bonafide attempt to present a copy of the Declaration to the co-inventor for his signature.

The last known address of the co-inventor who refuses to join in is set forth on the Statement under 37 C.F.R. §1.47(a).

02/05/2002 UEDUVIJE 00000142 033975 09701162

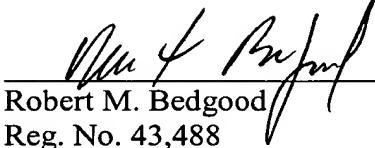
01 FC:122 130.00 CH

Please charge the requisite fee, as set forth in 37 C.F.R. § 1.17(h), for the filing of this petition to deposit account no. 03-3975.

Respectfully submitted,

PILLSBURY WINTHROP LLP

Date: 9/5/01



Robert M. Bedgood
Reg. No. 43,488

#8

Docket No. 051503/0278735

Declaration and Power of Attorney For Patent Application

English Language Declaration

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

the specification of which

(check one)

is attached hereto.

was filed on November 22, 2000 as United States Application No. or PCT International Application Number 09/701,162

and was amended on _____

(if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d) or Section 365(b) of any foreign application(s) for patent or inventor's certificate, or Section 365(a) of any PCT International application which designated at least one country other than the United States, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate or PCT International application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)

Priority Not Claimed

(Number)	(Country)	(Day/Month/Year Filed)	<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (list name and registration number)

Paul N Kokulis	16773	Kenarew H. Cotton	30368	Roger R. Wise	31204	Anthony L. Miele	34393
G. Lloyd Knight	17688	G. Paul Edged	24238	Michael R. Dzwonczyk	36787	Robert J. Walters	40882
Kevin E Joyce	20508	Lynn E. Eccleston	35881	W. Patrick Bengtsson	32456	Brian J. Beatus	38825
George M. Sinalia	18221	Timothy J. Klima	34852	Jack S. Banfika	37087	John R. Wetherell	31678
Donald J. Bird	25323	David A. Jakopin	32895	Adam R. Hess	41835	Robert M. Bedgoad	43488
Dale S. Lazar	28872	Mark G. Paulson	30793	William P. Atkins	38821	Alan E. Dow	35,123
Paul E. White, Jr.	32011	Stephen C. Grazier	31361	Paul L. Sharer	36004	Jane Babin	47,224
Glenn J. Penny	28458	Richard H. Zaiden	27248	Robin L. Teskin	35030	Jane Sze	43,843

Send Correspondence to: **Pillsbury Winthrop, LLP**
50 Fremont Street
San Francisco, CA 94120

Direct Telephone Calls to: (name and telephone number)
John R. Wetherell, Ph.D.

Full name of sole or first inventor Mario A. Bourdon	Sole or first inventors signature 	Date 06/04/01
Residence San Diego, California		
Citizenship United States		
Post Office Address 1076 Concord Street		
San Diego, California 92106		

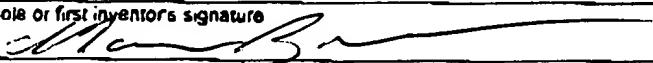
Full name of second inventor, if any Elena Deryugina	Second inventors signature	Date
Residence San Diego, California		
Citizenship Russian		
Post Office Address 8320 Regents Road, #1-J		
San Diego, California 92122		

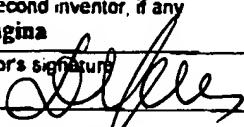
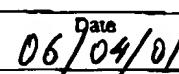
POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (list name and registration number)

Paul N Kokulis	16773	Kendrew H. Cotton	30368	Roger R. Wise	31204	Anthony L. Miele	34393
G. Lloyd Knight	17698	G. Paul Edgett	24238	Michael R. Dzwonczyk	36787	Robert J. Walters	40882
Kevin E Joyce	20508	Lynn E. Eccleston	35881	W. Patrick Bengtsson	32456	Brian J. Beatus	38825
George M. Sinska	18221	Timothy J. Klima	34852	Jack S. Baruska	37087	John R. Wetherell	31678
Donald J. Bird	25323	David A. Jakopin	32895	Adam R. Hess	41835	Robert M. Berggood	43488
Dale S Lazar	28872	Mark G. Paulson	30793	William P. Atkins	38821	Alan E. Dow	35,123
Paul E. White, Jr.	32011	Stephen C. Glazier	31381	Paul L. Sharer	36004	Jane Babin	47,224
Glenn J. Perry	28458	Richard H. Zaiden	27248	Robin L. Teslun	35030	Jame Sze	43,943

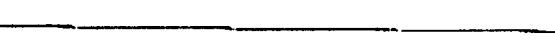
Send Correspondence to: **Pillsbury Winthrop, LLP**
50 Fremont Street
San Francisco, CA 94120

Direct Telephone Calls to: (name and telephone number)
John R. Wetherell, Ph.D.

Full name of sole or first inventor Mario A. Bourdon	Date
Sole or first inventor's signature 	
Residence San Diego, California	
Citizenship United States	
Post Office Address 1076 Concord Street	
San Diego, California 92106	

Full name of second inventor, if any Elena Deryugina	Date
Second inventor's signature 	
Residence San Diego, California	
Citizenship Russian	
Post Office Address 8320 Regents Road, #1-J	
San Diego, California 92122	

Full name of third inventor, if any Pothapragada Srirama Rao	Third inventor's signature 	Date 6/01/01
Residence San Diego, California		
Citizenship Indian		
Post Office Address 11959 Alpine Terrace		
San Diego, California 92128		

Full name of fourth inventor, if any Per Borgstrom	Fourth inventor's signature 	Date
Residence La Jolla, California		
Citizenship Swedish		
Post Office Address 2325 Camino Del Collado		
La Jolla, California 92039		

Full name of fifth inventor, if any	
Fifth inventor's signature	Date
Residence	
Citizenship	
Post Office Address	

Full name of sixth inventor, if any	
Sixth inventor's signature	Date
Residence	
Citizenship	
Post Office Address	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Mario Bourdon, et al.

Examiner: Not yet assigned

U.S. Serial No.: 09/701,162

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International Application No. PCT/US98/25791

Filed: November 22, 2000

Docket: 051503/0278735

For: INHIBITION OF TUMOR GROWTH BY MACROPHAGE INTERVENTION

Commissioner of Patents
Washington, D.C. 20231
Box PCT

STATEMENT UNDER 37 C.F.R. § 1.47(a)

The undersigned declares and states the following facts relating to efforts directed to securing execution of a Declaration from co-inventor **Per Borgstrom** for the above-identified application.

The undersigned is the President and CEO of the **La Jolla Institute for Molecular Medicine**, the owner of the invention disclosed and claimed in the subject application;

Per Borgstrom left the Institute and subsequently moved. Dr. Borgstrom's last known address was:

Sidney Kimmel Cancer Center
10835 Altman Row
San Diego, CA 92121;

Under the direction of the undersigned, I had my assistant, Margaret Toma, call Per Borgstrom at the Sidney Kimmel Cancer Center on June 4, 2001, to obtain Per Borgstrom's signature on the Declaration. Per Borgstrom declined to sign the Declaration at approximately 12:00 noon, pacific standard time.

On June 4, 2001, I requested my assistant, Margaret Toma, to prepare a certified letter to send to Per Borgstrom. The letter, including an inventor's Declaration for signing by Per Borgstrom, was sent June 4, 2001. A signed statement indicating that the letter was mailed on June 4, 2001, is attached herewith as Exhibit A. The return receipt for this certified letter was never received.

On July 30, 2001, a second certified letter was sent to Per Borgstrom. A copy of this letter is attached herewith as Exhibit B. A copy of the mail receipt and the return receipt for this letter is attached herewith as Exhibit C. This letter also included an inventor's Declaration for signing by Per Borgstrom. To date, there has been no response from Per Borgstrom to either the first or second certified letters.

The undersigned declares that all statements made herein on personal knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are made punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code on that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date:

08/31/01

By:



Mario A. Bourdon

PRESIDENT AND CEO

La Jolla Institute for Molecular Medicine

LA JOLLA INSTITUTE
FOR MOLECULAR MEDICINE

MEMORANDUM

To: Mario

From: Jamie

Re: Registered letter sent to Per Borgstrom

Date: July 30, 2001

I delivered the registered mail to Per Borgstrom to the Post Office on Regents Road on June 4, 2001.

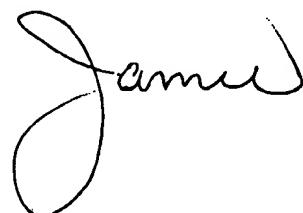


EXHIBIT A

LA JOLLA INSTITUTE
FOR MOLECULAR MEDICINE

July 30, 2001

Dr. Per Borgström
Sidney Kimmel Cancer Center
10835 Altman Row
San Diego, CA 92121

Dear Per,

Over the last two months we have requested your signature on documents relating to the patent application "Inhibition of Tumor Growth by Macrophage Inhibition." As you have not returned the signed document, we are again sending you the documents for your signature and return. A return envelope with postage is attached for your convenience. If you wish, my assistant can pick up the documents at your request. Margaret Toma can be reached at (858) 587-8788x114 Please complete the forms and return these critical documents within 5 working days of receipt.

Thank you for your assistance in this matter, it is appreciated.

Sincerely,



Mario A. Bourdon
President and CEO

COPY

4570 Executive Drive, Suite 100 • San Diego, CA 92121
Phone: (858) 587-8788
Fax: (858) 587-6742

**FOR UTILITY/DESIGN
CIP/PCT NATIONAL/PLANT
ORIGINAL/SUBSTITUTE/SUPPLEMENTAL
DECLARATIONS**

**RULE 63 (37 C.F.R. 1...)
DECLARATION AND POWER OF ATTORNEY
FOR PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**PW
FORM**

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the **INVENTION ENTITLED INHIBITION OF TUMOR GROWTH BY MACROPHAGE INTERVENTION**

the specification of which (**CHECK** applicable BOX(ES))
 A. is attached hereto.
 BOX(ES) → B. was filed on November 22, 2000 as U.S. Application No. 09/701,162
 → C. was filed as PCT International Application No. PCT/ / on

and (if applicable to U.S. or PCT application) was amended on

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose all information known to me to be material to patentability as defined in 37 C.F.R. 1.56. Except as noted below, I hereby claim foreign priority benefits under 35 U.S.C. 119(e)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT International Application which designated at least one other country than the United States, listed below and have also identified below any foreign application for patent or inventor's certificate, or PCT International Application, filed by me or my assignee disclosing the subject matter claimed in this application and having a filing date (1) before that of the application on which priority is claimed, or (2) if no priority claimed, before the filing date of this application:

PRIOR FOREIGN APPLICATION(S)	Date first Filed- open or Published	Date Patented or Granted	Priority NOT Claimed
Number <u>PCT/US98/25791</u> Country <u>PCT</u>	Day/MONTH/Year Filed <u>04 December 1998</u>	<u>17 June 1999</u>	

Except as noted below, I hereby claim domestic priority benefit under 35 U.S.C. 119(e) or 120 and/or 365(c) of the indicated United States applications listed below and PCT International applications listed above or below and, if this is a continuation-in-part (CIP) application, insofar as the subject matter disclosed and claimed in this application is in addition to that disclosed in such prior applications, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in 37 C.F.R. 1.56 which became available between the filing date of each such prior application and the national or PCT International filing date of this application:

PRIOR U.S. PROVISIONAL, NONPROVISIONAL AND/OR PCT APPLICATION(S)	Status	Priority NOT Claimed
Application No. (series code/serial no.) <u>60/067,591</u>	Day/MONTH/Year Filed <u>05 December 1997</u>	<u>pending, abandoned, patented</u> <u>Pending</u>

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Please direct all correspondence to: Robert M. Bedgood, Ph.D., Pillsbury Winthrop, 50 Fremont Street, San Francisco, CA 94105 and direct all telephone calls to (858) 509-4065

And I hereby appoint the below-named persons individually and collectively as my attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith and with the resulting patent, and I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct the above Firm and/or a below attorney in writing to the contrary.

Paul N. Kokulis	16773	Glenn J. Perry	28458	Stephen C. Glazier	31361	William P. Atkins	38821
G. Lloyd Knight	17698	Kendrew H. Colton	30368	Richard H. Zaitlen	27248	Paul L. Sharer	36004
Kevin E. Joyce	20508	G. Paul Edgett	24238	Roger R. Wise	31204	Anthony L. Miele	34393
George M. Shilla	18221	Lynn E. Eccleston	35861	Michael R. Dzwonczyk	36787	Russ Weinzimmer	36717
Donald J. Bird	25323	Timothy J. Klma	34852	W. Patrick Bengtsson	32456	Arthur J. O'Dea	42,952
Dale S. Lazar	28872	David A. Jakopin	32995	Jack S. Barufka	37087	Jonathan E. Jobe, Jr.	28429
Paul E. White, Jr.	32011	Mark G. Paulson	30793	Adam R. Hess	41835	John R. Wetherell, Jr.	31678
Robert M. Bedgood	43,488	James Y.C. Sze	43943	Suzanne L. Biggs	30158	Victor J. Castellucci	43,535

(1) INVENTOR'S SIGNATURE:

Date:

Mario	A.	BOURDON	
First:	Middle Initial:	Family Name:	
Residence	San Diego	California/U.S.	United States
City:		State/Foreign Country:	Country of Citizenship:
Post Office Address	1076 Concord Street		
(include Zip Code)	92106		

(2) INVENTOR'S SIGNATURE:

Date:

Elena	DERYUGINA		
First:	Middle Initial:	Family Name:	
Residence	San Diego	California/U.S.	Russia
City:		State/Foreign Country:	Country of Citizenship:
Post Office Address	8320 Regents Road, #1-J		
(include Zip Code)	92112		

(3) INVENTOR'S SIGNATURE:

Date:

Pothaprada	Sriram	RAO	
First:	Middle Initial:	Family Name:	
Residence	San Diego	California/U.S.	India
City:		State/Foreign Country:	Country of Citizenship:
Post Office Address	11959 Alpine Terrace		
(include Zip Code)	92128		

(4) INVENTOR'S SIGNATURE:

Date:

Per	BORGSTROM		
First:	Middle Initial:	Family Name:	
Residence	La Jolla	California/U.S.	Sweden
City:		State/Foreign Country:	Country of Citizenship:
Post Office Address	2325 Camino Del Collado		
(include Zip Code)	92037		

FOR ADDITIONAL INVENTORS, "X" box and proceed on the attached page to list each additional inventor.

Atty. Dkt. No. 051503-0278735

(C/M#)

Rule 56(a) & (b) = 37 C.F.R. 1.56(a) & (b)
PATENT AND TRADEMARK CASES - RULES OF PRACTICE
DUTY OF DISCLOSURE

(a) ... Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the [Patent and Trademark] Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability... (b) information is material to patentability when it is not cumulative and (1) It also establishes by itself, or in combination with other information, a prima facie case of unpatentability of a claim or (2) refutes, or is inconsistent with, a position the applicant takes in: (i) Opposing an argument of unpatentability relied on by the Office, or (ii) Asserting an argument of patentability

PATENT LAWS 35 U.S.C.

§102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent or
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months* before the filing of the application in the United States, or
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

§103. Condition for patentability; non-obvious subject matter

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made....
- (c) Subject matter developed by another person, which qualified as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

* Six months for Design Applications (35 U.S.C. 172).

Aug 07 01 12:47p

LaJolla Institute

(858) 587-6742

U.S. Postal Service
CERTIFIED MAIL RECEIPT

(Domestic Mail Only: No Insurance Coverage Provided)

SAN DIEGO CA 92121

mailing
receipt

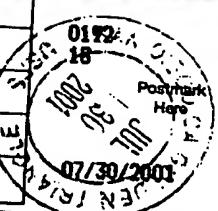
Postage	\$ 40.80
Certified Fee	\$2.10
Return Receipt Fee (Endorsement Required)	\$1.50
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 44.40

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Per Borgstrom

Street, Apt. No., or PO Box No.
10835 Altman Row

City, State, ZIP+4
San Diego, CA 92121

PS Form 3800, February 2000
 Paid by: See Reverse for Instructions



444# 1000200227303

REVERSE SIDE OF FORM

SENDER:

- Complete Items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this mail to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:

**Per Borgstrom
 Sidney Kimmel CC
 10835 Altman Row
 SDC# 92121**

I also wish to receive the following services (for an extra fee):

1. Addressee's Address
2. Restricted Delivery

Consult postmaster for fee.

4a. Article Number

7000-0520-0018-6580-91

4b. Service Type

<input type="checkbox"/> Registered	<input type="checkbox"/> Certified
<input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured
<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> COD

7. Date of Delivery

3/1/01

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

PS Form 3811, December 1994

38986

Domestic Return Receipt

Thank you for using Return Receipt Service.

4570 Executive Drive, Suite 100 • San Diego, CA 92121
 Phone: (858) 587-8788
 Fax: (858) 587-6742

Received Aug-07-01 12:31pm

From-858 587 6742

To-PILLSBURY CARMEL VLY Page 02

EXHIBIT C